Supreme Court, U.S.
FILED
APR 8 2002
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No. 01-1149

In The

Supreme Court of the United States

MISSOURI RIVER SERVICES, INC.,

Petitioner,

v.

OMAHA TRIBE OF NEBRASKA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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I.

INTRODUCTION

The United States Court of Appeals for the Eighth Circuit reversed the lower court for confirming an arbitration award which contained a remedy in violation of the sovereign immunity of the Omaha Tribe of Nebraska, and exceeded the authority of the arbitrator under 9 U.S.C. § 10(a) of the Federal Arbitration Act. *Missouri River Services, Inc. v. Omaha Tribe of Nebraska*, 267 F.3d 848 (8th Cir. 2001). The original award in favor of Missouri River Services, Inc., ("MRS") in the amount of $6,206,358.00 plus interest against the Omaha Tribe of Nebraska (the "Tribe") was not disturbed. Only that portion of the award which permitted its satisfaction out of the assets of the Tribe's Iowa casino, rather than the defunct Nebraska bingo operation which was the subject of the award, was disturbed.

MRS has now petitioned this Court to grant certiorari on two questions, framed by petitioner as follows:

> "1. Whether a court may vacate an arbitration award which satisfies all criteria set forth in the Federal Arbitration Act but (assertedly) violates extra-statutory requirements imposed by the court?
>
> 2. Whether a federal court to which an arbitration award has been submitted for confirmation may independently determine a question possessing jurisdictional implications where the jurisdictional question is inextricably intertwined with the merits of the case and necessarily was resolved by the arbitrator?"

The petition claims that there is a conflict of authority within the circuits that needs to be resolved by this Court. On the contrary, the Eighth Circuit Court of Appeals applied traditional rules of law recognized by this Court. The asserted errors consist of nothing more than a claim that these rules of law were misapplied, which this Court rarely recognizes as a basis for granting a Petition for a Writ of Certiorari. See Rule 10, *Rules of the Supreme Court of the United States.*

II.

STATEMENT OF THE CASE

This dispute arose out of a motion by MRS to confirm an arbitration award, and a motion by the Tribe to vacate, or in the alternative, modify the award. The heart of the controversy on appeal related to whether the arbitration award exceeded the grant of authority to the arbitrator in the agreement, and also violated the Tribe's sovereign immunity when confirmed. The award provides that it can be enforced out of the assets of a Tribal gaming operation in Iowa, but the arbitrator's authority and the Tribe's waiver of sovereign immunity was specifically limited to satisfaction *only* out of property purchased for the failed Nebraska gaming operation.

This case arose out of an agreement between the Tribe and MRS, dated December 10, 1987, as amended, establishing the terms under which MRS would build and manage a gaming facility on reservation property in

Nebraska.[1] The agreement provided for arbitration of disputes. A dispute developed under the agreement and MRS demanded arbitration.[2]

The arbitrator in this case derived her authority from Paragraph XI of the December 10, 1987 Agreement. The pertinent portion of Paragraph XI entitled "RESOLUTION OF DISPUTES" states:

> "In the event any controversy or claim arising out of this Agreement cannot be settled by the parties hereto, such controversy or claim shall be settled by binding arbitration in accordance with the then current rules of the American Arbitration Association.
>
> Owner [the Tribe] hereby waives its sovereign immunity from suit with respect to any disputes arising under this Agreement, **but only to the extent of all real and personal property purchased pursuant to this Agreement**, and Owner further agrees that judgment upon any arbitration award may be entered in any court having jurisdiction thereof, and that such court's judgment may result in any executable lien being placed on any **such Property. Any**

---

[1] The reservation includes land in both Nebraska and Iowa.

[2] MRS states, as a matter of fact, on pages 7 and 8 of its Petition, that MRS fully performed its Agreement with the Tribe but was expelled from the reservation. While this statement relates to the merits of the dispute before the arbitrator, which was not disturbed by the Eighth Circuit's decision, nevertheless the Tribe does not agree with this characterization of the facts and believes it is at least implicitly refuted by the arbitrator's findings denying MRS' claim for breach of its alleged "exclusive right to conduct gaming operations" on the reservation. See Appendix G, MRS' Petition, p. 51a.

> **monetary judgment or award may be satisfied only out of such property and/or out of Owner's share of any future NOP [Net Operating Profits] under this Agreement."** (Emphasis added)

This clear limitation of the arbitrator's authority was in contrast with the following award by the arbitrator:

> "Find for Claimant in the amount of $6,206,358.00, which includes interest for ten years as described in the December 10, 1987 agreement, net of the Tribe's July 8, 1993 settlement with Mr. Croll adjusted for interest through December 31, 1998. **The award is to be paid from the Enterprise, which includes all gaming operations on the reservation of the Omaha Tribe of Nebraska (the "Property"), including specifically the gaming operations at Onawa, Iowa; or from any other funds the respondent may elect to use."** (Emphasis added)

The clause in the contract between the parties, from which the arbitrator derived her authority, clearly and unambiguously limited the source for satisfying any award to the "real and personal property purchased pursuant to this Agreement . . . ", and any future profits "under this Agreement." An Amendment to Agreement,[3] approved by the Secretary of Interior on February 12, 1988, explicitly limited the "location of the Enterprise" to Thurston County, Nebraska. That paragraph stated in part:

---

[3] See Appendix I to this Brief containing relevant portions of the Amendment to Agreement.

> "The Enterprise will conduct its preliminary gaming activities . . . at the presently existing cultural center presently held in trust by the United States of America for the benefit of the owner . . . **in Thurston County, Nebraska** consisting of 1.25 acres more or less.
>
> Following construction of a permanent facility the Enterprise will conduct its business activities at a location **in Thurston County, Nebraska** to be agreed upon by the parties (the "Real Estate")." (Emphasis added)

In that same Amendment to Agreement, in Article XX captioned "Gaming Activities" the activities are limited to the conduct of "Bingo and Bingo-related activities."

These specific requirements of the location of the Enterprise in Thurston County, Nebraska, conducting bingo and bingo related activities, were in clear contrast with the award of the arbitrator that specifically mandates its satisfaction from Tribal gaming operations in Onawa, Iowa where Class III casino type gambling takes place. Inexplicably, the arbitrator assumed jurisdiction, for purposes of satisfying the award, over property clearly excluded from the purview of the arbitrator's power. The dispute resolution clause in the December 10th Agreement waived the Tribe's sovereign immunity "only to the extent of all real and personal property purchased pursuant to this Agreement. . . . " And it was *that* property from which an award could be satisfied. With the distinct limitation in the Agreement on the location and type of activities in Thurston County, it was an impossibility that any property purchased for the Onawa, Iowa casino was within the authority of the arbitrator.

MRS filed a motion for an order confirming the arbitration award in the United States District Court for the District of Nebraska, and the Tribe filed a motion to vacate the award or, in the alternative, to modify the award. The issues were presented to the District Court whether the arbitrator exceeded her authority and the Tribe's sovereign immunity, by allowing the arbitration award to be enforced against and satisfied out of property devoted to another tribal casino organized under a different contract, in a different state, involving a different class of gaming. The District Court confirmed the award and overruled the motion to vacate or in the alternative to modify.

The case was then appealed to the Eighth Circuit Court of Appeals by the Tribe. The Court of Appeals reversed the decision of the District Court summarizing its holding as follows:

> "In sum, we hold that the district court erred because the Agreement, as approved by the BIA, does not permit satisfaction of a monetary award from profits and proceeds of the Iowa casino. Thus, the judgment in favor of MRS should be strictly limited, as the Agreement provides, to profits of and property purchased for the Nebraska facility."

Missouri River Services, Inc. v. Omaha Tribe of Nebraska, 267 F.3d 848, 855 (8th Cir. 2001).

This decision was based on two independent grounds. First, the Tribe granted a limited waiver of sovereign immunity which allowed the enforcement of the arbitration award only against assets directly involved with the Nebraska contract. Since "waiver of

immunity from suit implicates jurisdictional concerns, a court must satisfy itself that jurisdiction exists." 267 F.3d at 852. The court, after examining the waiver, held on this issue that:

> "As approved, the Agreement unambiguously restricted the 'Location of the Enterprise' to 'Thurston County, Nebraska' and 'Gaming Activities' to 'Bingo and Bingo related activities'. By the express terms of the only enforceable, valid agreement before the court, the Tribe's waiver of immunity was limited to entry of a judgment and execution thereon only as to property or profits from the Nebraska Bingo facility."

267 F.3d at 854.

Second, the Eighth Circuit based its reversal on its conclusion that the arbitrator exceeded the scope of her authority under the Federal Arbitration Act, 9 U.S.C. § 10(a). In reaching this conclusion, the Eighth Circuit stated:

> "[T]he contractual language cannot reasonably be construed to include proceeds generated under a different agreement the Tribe had executed with a different party to conduct Class III gaming in a different state. To the contrary, '[t]he arbitrator's decision does not draw its essence from the contract because it is expressly contrary to the terms of the Agreement.' "

267 F.3d at 855.

III.

REASONS FOR DENYING WRIT

The Eighth Circuit Court of Appeals decided this case upon properly stated rules of law consistent with applicable decisions of the United States Supreme Court, and the decision does not present a direct conflict with the decisions of other Courts of Appeals.

The petition for certiorari essentially cites two reasons for granting certiorari.

First, MRS argues that the Eighth Circuit's decision erroneously ruled that the arbitration award could be vacated based on "extra-statutory grounds" imposed by the court rather than the Federal Arbitration Act, and this decision is in conflict with the decisions of other circuits.

Second, MRS argues that the Eighth Circuit decided a jurisdictional question which was "intertwined" with the merits of the arbitration decision which required the court to defer to the arbitrator's ruling on that issue. This decision MRS claims also conflicts with the decisions of other circuit courts.

It is evident from a careful review of the decision of the Court of Appeals that MRS' assertions in this respect are inaccurate. The Court of Appeals was not in error, and its decision does not pose any direct conflict with the decisions in other circuits.

Extra Statutory Requirements.

In section IA of Petitioner's Argument it claims that the Eighth Circuit did not base its decision on any of the

statutory grounds set forth in 9 U.S.C. § 10(a) of the Federal Arbitration Act. This is inaccurate.

The Eighth Circuit specifically cited 9 U.S.C. § 10(a) as authority. 267 F.3d at 854. That section provides that:

> "(a) In any of the following cases the United States court . . . may make an order vacating the award upon the application of any party to the arbitration –
>
> * * *
>
> (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made."

The Eighth Circuit specifically discussed Article XI of the contract which provided for binding arbitration and said that "[a]ny . . . award may be satisfied only out of" property purchased pursuant to "this Agreement" or any share of the Tribe's-profits "under this Agreement." Very simply, the Court of Appeals held that the arbitrator exceeded her powers because she authorized MRS to satisfy the award out of totally unrelated property subject to a *different* agreement.

In reaching this conclusion, the court cited various rules it had applied in the past defining when an arbitrator exceeds its powers. For example, the Eighth Circuit recognized that an arbitrator may interpret ambiguous language but may not "disregard or modify unambiguous contract provisions." An award will be set aside where it is "completely irrational or evidences a manifest disregard for the law." And, an arbitration award is "irrational

where it fails to draw its essence from the agreement." 267 F.3d at 854-855.

What is critical to recognize here is that the court was examining the arbitrator's abuse of its power based upon Article XI of the contract defining the power of the arbitrator. This decision had nothing to do with the merits of the case, but everything to do with the arbitrator's authority. This is precisely what is intended by 9 U.S.C. § 10(a)(4) when it states that an award can be vacated "[w]here the arbitrators exceeded their powers. . . . " Comparing an arbitrator's exercise of authority, against the contract which grants it, is a recognized judicial function under the decisions of this Court and the Federal Arbitration Act.

A court derives its authority, or jurisdiction, from the applicable legislative body or constitution. An arbitrator, on the other hand, must look to the contract between the parties as the sole source of his or her authority. As one court so aptly stated:

> "[T]he genesis of arbitral authority is the contract, and arbitrators are permitted to decide only those issues that lie within the contractual mandate. By necessary implication, an arbitrator award regarding a matter not within the scope of the governing arbitration clause is one made in excess of authority, and a court is precluded from giving effect to such an award."

Davis v. Chevy Chase Financial Ltd., 667 F.2d 160, 165 (D.C. Cir. 1981), citing as authority for the statement the United States Supreme Court Case of *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960).

It was the Tribe's contention in the lower court that the contract stated that it was not for the arbitrator to decide what assets could be used to satisfy an award. That was decided by the parties to the contract and placed beyond the arbitrator's authority or jurisdiction in the arbitration clause. Furthermore, this Court recognized in *AT&T Technologies v. Communications Workers of America*, 475 U.S. 643, 648 (1986) that "[u]nless the parties clearly and unmistakably provide otherwise, the question of whether the parties agreed to arbitrate is to be decided by the Court, not the arbitrator."

It is therefore apparent that the Eighth Circuit decided this case upon the appropriate section of the Federal Arbitration Act, and did so by applying properly stated rules of law. It did not challenge, or disagree with, any contrary decisions from other circuits.

Petitioner persists in this theme by suggesting that the Eighth Circuit's decision was based upon non-statutory, judge-made criteria emanating largely from dicta in this Court's decision in *Wilko v. Swan*, 346 U.S. 427 (1953). *Wilko*, it is argued, was later criticized and then overruled in *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220 (1987) and *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989).

Petitioners argue that the *Wilko* court used such terms as "manifest disregard of the law" and "draw its essence from the contract" in describing the legal boundaries of an arbitration award. While *Wilko* was overruled by *Rodrigues de Quijas v. Shearson/American Express, Inc., supra.*, it was not overruled for the use of these terms, but rather for holding that arbitration was not an appropriate

forum for deciding claims under the Securities Act of 1933. More importantly, these terms have been used by this Court in cases decided after *Wilko* suggesting that the underlying premise of petitioner's argument, in attempting to demonstrate a conflict between the Eighth Circuit decision and this Court's cases, is flawed. *See, e.g., United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960) ("[Y]et his award is legitimate only so long as it draws its essence from the collective bargaining agreement."); *United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 41 (1987) ("[T]he arbitrator's decision must draw its essence from the agreement . . . "); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 942 (1995) ("[P]arties [are] bound by arbitrator's decision not in "manifest disregard of the law", citing *Wilko v. Swan* and noting "overruled on other grounds.").

For petitioner to suggest, therefore, that the Eighth Circuit's decision in this case is in direct conflict with the decisions in other circuits is a misguided effort to create a conflict where none exists. The very language which supposedly creates the conflict among circuit courts has been used, not only by the Eighth Circuit in this case, but also by the United States Supreme Court itself.

Jurisdictional Issue Intertwined with the Merits.

Petitioner next argues that the sovereign immunity jurisdictional issue addressed by the Court of Appeals was intertwined with the merits of the arbitration award, and therefore the court should have deferred to the decision of the arbitrator on the merits to resolve this issue. Several cases from various circuits are cited as authority

for this proposition, including the Eighth Circuit decision of *Osborn v. United States*, 918 F.2d 724, 730 (8th Cir. 1990). The *Obsorn* case discussed the obligation of a district court to request an evidentiary hearing if it thinks it lacks subject matter jurisdiction, and rule on that issue. As the court further stated, "[t]he only exception is in instances when the jurisdictional issue is 'so bound up with the merits that a full trial on the merits may be necessary to resolve the issue.' " 918 F.2d at 730.

The first problem with petitioner's argument on this point is that none of the cases it cited dealt with arbitration, and therefore are factually remote to the case before the court. Second, the jurisdictional issue was not in any way "intertwined" with the merits of the case, or the arbitration award. The arbitration clause on its face prohibited making the award applicable to any assets other than those associated with "this Agreement." The arbitrator, for whatever reason, clearly violated that clause when she made the assets of a completely different casino operation, governed by a different agreement, subject to the award.

Furthermore, the Eighth Circuit doubted that the arbitrator even interpreted the arbitration clause on this waiver of immunity issue. As the court stated:

> "Assuming the arbitrator attempted to interpret the scope of the waiver of immunity, which we doubt, we agree with the Tribe that the district court erred in believing it could not disturb her interpretation. Because a waiver of immunity from suit implicates jurisdictional concerns, a court must satisfy itself that jurisdiction exists."

267 F.3d at 852. Obviously, the Eighth Circuit never believed this jurisdictional issue was in any way "intertwined" with the merits. The merits of the case had nothing to do with the arbitration clause, the sovereign immunity jurisdictional issue, or the arbitrator's usurpation of power specifically denied it by the contract.

Again, despite petitioner's strained attempt to create a conflict among the circuits, where none really exists, it is apparent that the Eighth Circuit decided this case upon a correct application of properly stated rules of law.

Sovereign immunity has always been viewed by the courts as a limitation on their jurisdiction, and as a matter for the court to examine and decide on its own. In *United States v. Sherwood*, 312 U.S. 584, 586-87 (1941), the Supreme Court stated that "[t]he United States, as sovereign, is immune from suit save as it consents to be sued . . . and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." Any such consent must be "strictly interpreted." 312 U.S. at 590. As sovereigns, Indian Nations also enjoy immunity "from judicial attack absent consent to be sued." *Kiowa Tribe of Oklahoma v. Manufacturing Technologies*, 523 U.S. 751, 757 (1998).

In *United States v. U.S. Fidelity and Guaranty Co.*, 309 U.S. 506 (1940), the Supreme Court held that the Choctaw and Chickasaw Nations, and the United States as their trustee, could not be held liable on a judgment rendered on a cross-claim in state court because there had been no congressional consent. Therefore, the judgment was subject to collateral attack. The Supreme Court stated:

> "Consent alone gives jurisdiction to adjudge a sovereign. Absent that consent, the attempted exercise of judicial power is void."

309 U.S. at 514. Furthermore, the failure to object to the Court's jurisdiction did not constitute a waiver of this immunity because "immunity cannot be waived by officials", otherwise "it would subject the Government to suit in any court in the discretion of its responsible officers." 309 U.S. at 513.

On pages 11 and 18 of its Petition, MRS argues that the Tribe had stipulated that the arbitrator had the authority to decide the Tribe's waiver of sovereign immunity. The Tribe disputes this suggestion. The stipulation, Appendix H to the Petition, does not specifically identify that as an issue subject to arbitration. Furthermore, the Eighth Circuit, citing this Court's decision in the *United States v. U.S. Fidelity and Guaranty Co.*, stated that "the Tribe's attorney could not expand the scope of the Tribe's waiver from suit in the pre-hearing submission to the arbitrator." 267 F.3d at 852.

What MRS is really arguing is that the parties agreed that the arbitrator should decide the issue of the Tribe's scope of its waiver of sovereign immunity in the Arbitration Clause. This is an issue of who properly decides an arbitrator's scope of authority – the arbitrator or the court. This Court has held that the scope of an arbitrator's power to decide an issue, or arbitrability of an issue, is subject to independent review by the courts. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938 (1995). This Court further admonished that "[c]ourts should not assume that the parties agreed to arbitrate arbitrability unless there is 'clea[r] and unmistakabl[e]' evidence that

they did so." 514 U.S. at 944. Not only did the Tribe's attorney not have the authority to expand by stipulation the arbitration clause's delegation of power to the arbitrator, but there is no "clear and unmistakable" evidence that the parties agreed to do so.

IV.

CONCLUSION

It is evident from a review of the Eighth Circuit's decision in this case that it followed well established principles of law rendered by this Court. There is no conflict among the circuits, represented by this case, that calls for a resolution by this Court. The case is simply one in which an arbitrator exceeded her authority under the arbitration clause in granting a remedy, and in the process violated the sovereign immunity of the Omaha Tribe of Nebraska. The Eighth Circuit reviewed the case on very narrow and traditional grounds, and prevented what would have otherwise been a clear injustice to the Tribe.

The arbitrator's decision on the merits was not disturbed. The court merely limited the applicability of the award, and its satisfaction, to assets within the limits of the Tribe's waiver of sovereign immunity.

The Eighth Circuit based its decision on two independent grounds, the arbitrator's violation of its authority and a violation of the Tribe's sovereign immunity. Either basis alone is sufficient to sustain the Court's decision.

We therefore respectfully request that the Court deny the Petition for Certiorari.

Dated this 8th day of April, 2002.

OMAHA TRIBE OF NEBRASKA, a federally recognized Indian Tribe, Respondent

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APPENDIX I

AMENDMENT TO AGREEMENT

This Amendment to the Agreement dated December 10, 1987 (the "Amendment") is made on the date set forth opposite the signature of the parties, by and between the Omaha Tribe of Nebraska (hereinafter referred to as the "Owner"), which is a federally-recognized Indian Tribe organized pursuant to the Indian Reorganization Act of June 18, 1934 (25 U.S.C. §476) and Missouri River Services, Inc., a Delaware corporation f/k/a Streicher & Stearns, Inc. a Delaware corporation (hereinafter referred to as "MRS").

RECITALS

WHEREAS, the owner is a federally-recognized Indian Tribe and

WHEREAS, Streicher & Stearns, Inc. has changed its name to Missouri River Services, Inc.; and

WHEREAS, the Owner and MRS entered into an Agreement dated December 10, 1987 whereby MRS was retained by the Owner to finance, establish, operate, and manage property owned by the Owner (the "Enterprise") and to conduct, manage, and operate Bingo and other gaming activities of the Enterprises on behalf of the Owner; and

WHEREAS, the Department of Interior, Bureau of Indian Affairs, has requested that the parties make certain changes to the Agreement to comply with a memorandum from Under-Secretary Ross Swimmer dated

April 7, 1986 prior to the time that it will issue its approval of the Agreement, and

WHEREAS, the parties wish to amend and modify the agreement to comply with the April 7, 1986 memorandum from Under-Secretary Swimmer.

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, the parties agree to amend the Agreement as follows:

WITNESSETH

* * *

3. The Agreement does not currently specify the location where the Enterprise will conduct its activities. Accordingly, the Agreement should be, and is hereby amended by inserting the following language at the end thereof:

XIX. LOCATION OF THE ENTERPRISE

The Enterprise will conduct its Preliminary Gaming Activities, as that term is defined in the Supplemental Agreement of December 10, 1987, at the presently existing Cultural Center presently held in trust by the United States of America for the benefit of the Owner and legally described as follows:

S[illegible] of the NE[illegible] of the SE[illegible] of the NW[illegible] Section 25 Township 25 Range 9 in Thurston County, Nebraska consisting of 1.25 acres more or less.

Following construction of a permanent facility the Enterprise will conduct its business activities at a location in Thurston County,

Nebraska to be agreed upon by the parties (the "Real Estate").

In the event that the Real Estate is owned by a third party MRS will purchase the Real Estate, and for the sum of One Dollar ($1.00), convey the Real Estate to the Owner whereupon the Owner shall place the Real Estate in trust with the United States of America for the benefit of the Owner. The cost of acquisition of the Real Estate shall be deemed a capital investment and repaid to MRS in the manner set forth in Article II(A). The parties acknowledge and agree that notwithstanding anything in this Agreement to the contrary, the Owner is not required to obtain, or provide, the Real Estate to MRS, but, instead, MRS will secure the same at its sole cost and expense, which cost and expense shall be repaid to MRS pursuant to the terms of Article II(A).

4. The Agreement should be, and is hereby amended by inserting the following language at the end thereof:

Article XX, Gaming Activities

The Enterprise shall conduct Bingo and Bingo-related activities.

5. This Amendment is intended to be construed in accordance with the terms of the Agreement. In the event that there is any conflict between this Amendment and the Agreement, the terms of the prior shall govern the terms of the latter to the extent of any such inconsistency.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment at the place, and upon the day and year set forth opposite their respective signatures.

"OWNER"

Executed this 2nd day of February, 1988 at Macy, Nebraska

By: /s/ [Illegible]
Its: Chairman, Omaha Tribe Nebraska

"MRS"

By: /s/ [Illegible]
Its: Secretary/Treasurer

Executed this 4th day of February, 1988 at Barrington, Illinois

RECEIVED AND APPROVED:

/s/ [Illegible]
Office of the Secretary of Interior/Bureau of Indian Affairs

Date 2/12/88